

113TH CONGRESS  
2D SESSION

# S. 2160

To amend the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 26, 2014

Mr. HOEVEN (for himself, Mr. TESTER, Mr. BARRASSO, and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To amend the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Native American Chil-  
5       dren’s Safety Act”.

1     **SEC. 2. CHARACTER INVESTIGATIONS.**

2         Section 408 of the Indian Child Protection and Fam-  
3         ily Violence Prevention Act (25 U.S.C. 3207) is amended  
4         by adding at the end the following:

5             “(d) BY TRIBAL SOCIAL SERVICES AGENCY FOR  
6         FOSTER CARE PLACEMENTS IN TRIBAL COURT PRO-  
7         CEEDINGS.—

8             “(1) DEFINITIONS.—In this subsection:

9                 “(A) COVERED INDIVIDUAL.—The term  
10                 ‘covered individual’ includes—

11                 “(i) any individual 18 years of age or  
12                 older; and

13                 “(ii) any individual who an Indian  
14                 tribe described in paragraph (2)(A) deter-  
15                 mines is subject to a character investiga-  
16                 tion under that paragraph.

17             “(B) FOSTER CARE PLACEMENT.—The  
18                 term ‘foster care placement’ means any action  
19                 removing an Indian child from a parent or In-  
20                 dian custodian for temporary placement in a  
21                 foster home or institution or the home of a  
22                 guardian or conservator if—

23                 “(i) the parent or Indian custodian  
24                 cannot have the child returned on demand;  
25                 and

1                     “(ii) parental rights have not been  
2                     terminated.

3                     “(C) INDIAN CUSTODIAN.—The term ‘In-  
4                     dian custodian’ means any Indian—

5                     “(i) who has legal custody of an In-  
6                     dian child under tribal law or custom or  
7                     under State law; or

8                     “(ii) to whom temporary physical  
9                     care, custody, and control has been trans-  
10                   ferred by the parent of the child.

11                   “(D) PARENT.—The term ‘parent’  
12                   means—

13                   “(i) any biological parent of an Indian  
14                   child; or

15                   “(ii) any Indian who has lawfully  
16                   adopted an Indian child, including adop-  
17                   tions under tribal law or custom.

18                   “(E) TRIBAL COURT.—The term ‘tribal  
19                   court’ means a court—

20                   “(i) with jurisdiction over foster care  
21                   placements; and

22                   “(ii) that is—

23                   “(I) a Court of Indian Offenses;

1                         “(II) a court established and op-  
2                         erated under the code or custom of an  
3                         Indian tribe; or

4                         “(III) any other administrative  
5                         body of a tribe that is vested with au-  
6                         thority over foster care placements.

7                         “(F) TRIBAL SOCIAL SERVICES AGENCY.—

8                         The term ‘tribal social services agency’ means  
9                         the agency of the Federal Government or of an  
10                         Indian tribe described in paragraph (2)(A) that  
11                         has the primary responsibility for carrying out  
12                         foster care services (as of the date on which the  
13                         proceeding described in paragraph (2)(A) com-  
14                         mences) on the Indian reservation of the Indian  
15                         tribe.

16                         “(2) CHARACTER INVESTIGATIONS BEFORE  
17                         PLACEMENT.—

18                         “(A) IN GENERAL.—Except as provided in  
19                         paragraph (3), no foster care placement shall be  
20                         ordered in any proceeding over which an Indian  
21                         tribe has exclusive jurisdiction until the tribal  
22                         social services agency—

23                         “(i) completes an investigation of the  
24                         character of each covered individual who  
25                         resides in the household or is employed at

1                   the institution in which the foster care  
2                   placement will be made; and

3                   “(ii) concludes that each covered indi-  
4                   vidual described in clause (i) meets such  
5                   standards of character as the Indian tribe  
6                   shall establish in accordance with subpara-  
7                   graph (B).

8                   “(B) STANDARDS OF CHARACTER.—The  
9                   standards of character described in subpara-  
10                  graph (A)(ii) shall include—

11                  “(i) requirements that each tribal so-  
12                  cial services agency described in subpara-  
13                  graph (A)—

14                  “(I) perform criminal records  
15                  checks, including fingerprint-based  
16                  checks of national crime information  
17                  databases (as defined in section  
18                  534(f)(3) of title 28, United States  
19                  Code); and

20                  “(II) check any child abuse and  
21                  neglect registry maintained by the  
22                  State in which the covered individual  
23                  resides for information on the covered  
24                  individual, and request any other  
25                  State in which the covered individual

1                   resided in the preceding 5 years, to  
2                   enable the tribal social services agency  
3                   to check any child abuse and neglect  
4                   registry maintained by that State for  
5                   such information; and

6                   “(ii) any other additional requirement  
7                   that the Indian tribe determines is nec-  
8                   essary.

9                   “(C) RESULTS.—Except as provided in  
10                  paragraph (3), no foster care placement shall be  
11                  ordered in any proceeding described in subparagraph  
12                  (A) if an investigation described in clause  
13                  (i) of that subparagraph reveals that a covered  
14                  individual described in that clause—

15                  “(i) has been found by a Federal,  
16                  State, or tribal court to have committed  
17                  any crime listed in clause (i) or (ii) of sec-  
18                  tion 471(a)(20)(A) of the Social Security  
19                  Act (42 U.S.C. 671(a)(20)(A)); or

20                  “(ii) is listed on a registry described  
21                  in subparagraph (B)(i)(II).

22                  “(D) DEADLINE.—Except as provided in  
23                  paragraph (3), the tribal social services agency  
24                  shall satisfy the requirements of clauses (i) and  
25                  (ii) of subparagraph (A) not later than 14 days

1           after the date on which the proceeding de-  
2           scribed in subparagraph (A) commences.

3           “(3) EMERGENCY PLACEMENT.—Paragraph (2)  
4           shall not apply to an emergency foster care place-  
5           ment, as determined by an Indian tribe described in  
6           paragraph (2)(A).

7           “(4) RECERTIFICATION OF FOSTER HOMES OR  
8           INSTITUTIONS.—

9           “(A) IN GENERAL.—Not later than 180  
10          days after the date of enactment of this sub-  
11          section, each Indian tribe shall establish proce-  
12          dures to recertify homes or institutions in which  
13          foster care placements are made.

14          “(B) CONTENTS.—The procedures de-  
15          scribed in subparagraph (A) shall include, at a  
16          minimum, periodic intervals at which the home  
17          or institution shall be subject to recertification  
18          to ensure—

19           “(i) the safety of the home or institu-  
20           tion for the Indian child; and

21           “(ii) that each covered individual who  
22          resides in the home or is employed at the  
23          institution is subject to a character inves-  
24          tigation in accordance with this subsection,  
25          including any covered individual who—

1                         “(I) resides in the home or is em-  
2                         ployed at the institution on the date  
3                         on which the procedures established  
4                         under subparagraph (A) commences;  
5                         and

6                         “(II) did not reside in the home  
7                         or was not employed at the institution  
8                         on the date on which the investigation  
9                         described in paragraph (2)(A)(i) was  
10                         completed.

11                         “(C) REGULATIONS PROMULGATED OR  
12                         GUIDANCE ISSUED BY THE SECRETARY.—The  
13                         procedures established under subparagraph (A)  
14                         shall be subject to any regulation promulgated  
15                         or guidance issued by the Secretary that is in  
16                         accordance with the purpose of this subsection.

17                         “(5) REGULATIONS.—Not later than 180 days  
18                         after the date of enactment of this subsection and  
19                         after consultation with Indian tribes, the Secretary  
20                         shall promulgate a regulation regarding—

21                         “(A) procedures for a character investiga-  
22                         tion of any covered individual who—

23                         “(i) resides in the home or is em-  
24                         ployed at the institution in which the fos-  
25                         ter care placement is made after the date

1           on which the investigation described in  
2           paragraph (2)(A)(i) is completed; and

3                 “(ii) was not the subject of an inves-  
4                 tigation described in paragraph (2)(A)(i)  
5                 before the foster care placement was made;

6                 “(B) self-reporting requirements for foster  
7                 care homes or institutions in which any covered  
8                 individual described in subparagraph (A) re-  
9                 sides if the head of the household or the oper-  
10                 ator of the institution has knowledge that the  
11                 covered individual—

12                     “(i) has been found by a Federal,  
13                     State, or tribal court to have committed  
14                     any crime listed in clause (i) or (ii) of sec-  
15                     tion 471(a)(20)(A) of the Social Security  
16                     Act (42 U.S.C. 671(a)(20)(A)); or

17                     “(ii) is listed on a registry described  
18                     in paragraph (2)(B)(i)(II);

19                 “(C) procedures and guidelines for emer-  
20                 gency foster care placements under paragraph  
21                 (3); and

22                 “(D) procedures for certifying compliance  
23                 with this Act.”.

